IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10582 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OMPRAKASH GANGOTRIPRASAD JAISWAL - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR HM JADEJA for Petitioner(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/03/2007

ORAL JUDGMENT

1. Mr.H.M. Jadeja, learned counsel for the petitioner and Mr.L.R. Pujari, learned Assistant Government Pleader for the respondent – State.

2. Omprakash Gangotriprasad Jaiswal – petitioner herein, has filed this writ application challenging the order dtd.12/8/1992 passed by the Collector, Vadodara in Case No.SP/ENFO/B/Case.Reg.No.22 and the order dtd.14/7/1995 passed by the Joint Secretary, Food and Civil Supply Department, Gandhinagar in Case Sr.No.APL/1092/3018/J.

3. Short facts necessary for disposal of the present writ application are that on 15/10/1991, Additional Collector, Dabhoi intercepted Truck No.GJ-6-C-5370 and found that 65 bags of wheat, which were to be distributed at fair price shop, were being transported illegally to some other place. He accordingly seized the goods and the vehicle, thereafter, notice was issued to the petitioner to show cause that why the goods and the vehicle be not confiscated. Notice was issued to the petitioner as the Tempo Truck belonged to him.

4. The petitioner appeared before the Collector and submitted his defence, pleading inter-alia that the goods belonged to Jamnaprasad Gangotriprasad Jaiswal who in his turn had purchased the wheat from agriculturists. In support of the said submission, receipts alleged to be executed by the agriculturists in favour of Jamnaprasad

Gangotriprasad Jaiswal were also produced.

5. It appears that the petitioner in support of his defence did not examine the driver of the truck, or Jamnaprasad Gangotriprasad Jaiswal (who appears to be brother of the petitioner) or the agriculturists, who allegedly sold the goods to said Jamnaprasad Gangotriprasad Jaiswal.
6. After hearing the parties, the learned Collector directed confiscation of the goods subject to condition that on payment of Rs.26,000=00 (Rupees Twenty Six Thousand only), the wheat may be released and on deposit of Rs.25,000=00 (Rupees Twenty Five Thousand only), the vehicle be released.
7. It appears that the petitioner had already submitted a Bank Guarantee in sum of Rs.25,000=00 and had already taken possession of the vehicle. The custody of the wheat was not applied for by the petitioner.
8. Being aggrieved by the order passed by the Collector, the petitioner preferred a revision petition, which came to be dismissed. It is to be noted that confiscation of the wheat was not challenged by anybody.
9. Mr.Jadeja, learned counsel for the petitioner submits that an appropriate opportunity to give effective reply and make effective representation was not given to the

petitioner, the Jt.Secrtary illegally relied upon the admission alleged to be made by Jamnaprasad Gangotriprasad Jaiswal and Omprakash Gangotriprasad Jaiswal (petitioner) on 15/10/1991, without even supplying copy of the said admission alleged to be recorded by the Additional Collector. His submission is that the petitioner - Omprakash Gangotriprasad Jaiswal was at Bombay on 15/10/1991 and as such his statement could not be recorded. His further submission is that the State has failed in proving that the goods were to be distributed at fair price shop. His last submission is that in absence of positive evidence, the order of confiscation could not be made.

10. Mr.L.R. Pujari, learned counsel for the State, on the other hand, submits that the two authorities i.e. the Collector and Jt.Secretary have given cogent reasons to come to the conclusion and have relied upon statements recorded by the Addl.Collector. He submits that there is no scope for interference.

11. The sale receipts alleged to be executed by the agriculturists in favour of Jamnaprasad Gangotriprasad Jaiswal cannot be taken to be on their face value unless Jamnaprasad Gangotriprasad Jaiswal or the scribe of the

receipts were examined. Present is not a case where the receipts were executed in favour of the present petitioner and he had obtained the same after paying money. The receipts were executed by agriculturists in favour of Jamnaprasad Gangotriprasad Jaiswal and in such a case, either the executant of the receipts or the person who has obtained the receipts could only prove the receipts. The petitioner even did not examine the driver of the Truck in support of his defence that the goods were loaded from some fields or from some place where the goods was stored, after purchase from agriculturists. Immediately after the truck was intercepted by the Addl.Collector, statements of the petitioner and Jamnaprasad Gangotriprasad Jaiswal were recorded. I have no reason to hold that the Addl.Collector would illegally record the statements simply to make out a case that the goods were illegally transported. Even before this Court, affidavit of Jamnaprasad Gangotriprasad Jaiswal, has not been filed to convince the court that Jamnaprasad Gangotriprasad Jaiswal was not indulged in nefarious activities. Jamnaprasad Gangotriprasad Jaiswal has admitted that he was engaged in nefarious activities of illegal transporting the goods and disputed was his

sixth trip. The petitioner had also admitted before the Addl.Collector that the goods belonged to a fair price shop. The authorities have taken into consideration sum total of the circumstances and have also properly appreciated evidence available on the record.

12.I do not find any reason to take a view different from one taken by the authorities. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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